



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

DAVID WAYNE ALLEN,  
Plaintiff,

vs.

ASSOCIATE WARDEN MR. CARTRIDGE  
et al.,  
Defendants.

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CIVIL ACTION NO. 8:08-600-HFF-BHH

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ORDER

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This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Defendant David Lovice's motion to dismiss [Doc. 51] be granted and the action be dismissed as against Defendant Lovice without prejudice. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 3, 2009, and the Clerk of Court entered Plaintiff's objections on April 10, 2009. Defendant Lovice subsequently filed a response to the objections on April 27, 2009.

Having carefully considered the objections, the Court finds them to be without merit. Simply stated, the Court warned Plaintiff as early as June 19, 2008 that "[D]efendant Lovice could be dismissed from this action if [P]laintiff fails to comply with the requirements of Rule 4(m)." (June 19, 2008, Order.) Thus, inasmuch as Plaintiff failed to abide by the rule, nor has he set forth good cause for his failure to do so, the Court will dismiss Plaintiff's action as against Defendant Lovice without prejudice.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court that Defendant Lovice's motion to dismiss [Doc. 51] is **GRANTED** to the extent that Plaintiff's action against Defendant Lovice is **DISMISSED** without prejudice.

**IT IS SO ORDERED.**

Signed this 10th day of September, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.